IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JEFF MEDLEY v. STATE OF TENNESSEE

Appeal from the Circuit Court for Warren County
Nos. F-4799, F-5160, F-5189, F-5285 Larry B. Stanley, Jr., Judge

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No. M2007-02210-CCA-R3-CO - Filed April 10, 2008

This matter is before the Court upon the State's motion to dismiss or in the alternative to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. Petitioner, Jeff Medley, has appealed the trial court's order dismissing his petition for "Writ of Error Coram Nobis to Vacate State Conviction Where Sentence has been Served" in which Petitioner alleged that he was ineffectively represented and entered an involuntary and unknowing guilty plea. Upon a review of the record in this case, we are persuaded that the trial court was correct in dismissing the petition for coram nobis relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Jeff Medley, Pro Se, Pine Knot, Kentucky.

Robert E. Cooper, Jr., Attorney General & Reporter; Mark A. Fulks, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to Petitioner, he was arrested in December of 1982 and charged with robbery in case No. F-4799. On September 6, 2007, Petitioner filed a petition for "Writ of Error Coram Nobis to Vacate State Conviction Where Sentence has been Served," in which he argued that his trial counsel was ineffective. Petitioner also alleged that he was deceived by trial counsel and entered a plea that was not intelligent, knowing, or voluntary. Petitioner also argues that he is suffering consequences in a federal sentence as a result of his state conviction because the state conviction

was used to "aggravate or enhance" the federal sentence Petitioner is currently serving. Petitioner concedes that he has fully served the sentence for which he seeks relief.

Because Petitioner has served his entire sentence, we conclude that the challenge to his sentence is moot and, moreover, does not fall within any exception to the rule of mootness. *See, e.g., McIntyre v. Traughber*, 884 S.W.2d 134, 137-38 (Tenn. Crim. App. 1994); *see also State v. Doe*, 813 S.W.2d 150, 152 (Tenn. Crim. App. 1991); *State v. Carolyn Wheeler*, No. 01C01-9712-CR-00556, 1998 WL 849358, at *1 (Tenn. Crim. App., at Nashville, Dec. 3, 1998); *State v. Richard Dennis Reagan*, No. 03C01-9508-CC-00213, 1996 WL 377085, at *1 (Tenn. Crim. App., at Knoxville, July 5, 1996).

Moreover, Petitioner does not present issues that are cognizable in a petition for coram nobis relief and his issues, even if deemed appropriate, would be barred by the statute of limitations. Relief by petition for writ of error coram nobis is provided for in Tennessee Code Annotated section 40-26-105. That statute provides, in pertinent part:

> The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial. The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause.

T.C.A. § 40-26-105. The writ of error coram nobis is an "extraordinary procedural remedy," filling only a "slight gap into which few cases fall." *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999). The "purpose of this remedy 'is to bring to the attention of the court some fact unknown to the court which if known would have resulted in a different judgment.'" *State v. Hart*, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995) (quoting *State ex rel. Carlson v. State*, 407 S.W.2d 165, 167 (Tenn. 1966)). The decision to grant or deny a petition for writ of error coram nobis rests within the sound discretion of the trial court. *Teague v. State*, 772 S.W.2d 915, 921 (Tenn. Crim. App. 1988), *overruled on other grounds by Mixon*, 983 S.W.2d at 671 n.3.

A petition for writ of error coram nobis must relate: (1) the grounds and the nature of the newly-discovered evidence; (2) why the admissibility of the newly-discovered evidence may have resulted in a different judgment had the evidence been admitted at the previous trial; (3) that the petitioner was without fault in failing to present the newly-discovered evidence at the appropriate time; and (4) the relief sought by the petitioner. *Hart*, 911 S.W.2d at 374-75. A petition for writ of error coram nobis must usually be filed within one year after the judgment becomes final. *See*

T.C.A. § 27-7-103; *Mixon*, 983 S.W.2d at 670. It has been determined that a judgment becomes final, for purposes of coram nobis relief, thirty days after the entry of the judgment in the trial court if no post-trial motion is filed, or upon entry of an order disposing of a timely-filed, post-trial motion. *Mixon*, 983 S.W.2d at 670.

The record indicates that Petitioner was convicted sometime between December 1982, when he was arrested for robbery, and January of 1999, when his sentence expired. Petitioner does not present sufficient evidence to establish that the statute of limitations should be tolled to permit the late filing of his petition as Petitioner has not shown that he was "without fault" in failing to previously present this evidence. T.C.A. § 40-26-105; *Mixon*, 983 S.W.2d at 668. Further, Petitioner could have submitted these issues in a post-conviction petition.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

> The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:
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> The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge . . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20. We affirm the judgment of the trial court.

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JERRY L. SMITH, JUDGE